

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL J. BERBERICH,

Plaintiff,

Case Number: 06-CV-11672

v.

HON. DENISE PAGE HOOD

FEDERAL BUREAU OF PRISONS,

Defendant.

ORDER OF SUMMARY DISMISSAL

Plaintiff Michael Berberich, a federal inmate currently incarcerated at the Federal Correctional Institution in Milan, Michigan, has filed a *pro se* Complaint alleging that Defendant Federal Bureau of Prisons violated his rights under the Constitution and Religious Freedom Restoration Act. Plaintiff is proceeding without prepayment of the filing fee in accordance with 28 U.S.C. § 1915(a)(1). The Court dismisses Plaintiff's Complaint, pursuant to 28 U.S.C. § 1915(e)(2),¹ because Plaintiff's claims are barred by the doctrine of *res judicata*.

In his Complaint, Plaintiff argues that the Federal Bureau of Prisons violated his right to the free exercise of religion by not permitting him to possess wooden rune staves. Plaintiff states that rune staves are necessary for the practice of his religion, Odinism.

¹28 U.S.C. § 1915(e)(2) provides, in pertinent part:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

...

(B) the action or appeal -

...

(ii) fails to state a claim upon which relief may be granted...

Previously, Plaintiff filed a complaint in the United States District Court for the District of South Dakota claiming that the Bureau of Prisons' policy prohibiting him from possessing rune staves burdened his free exercise of religion. The district court granted defendant's motion for summary judgment. *Berberich v. Sabol and Federal Bureau of Prisons*, No. 03-4063 (S.D.Aug. 10, 2004). Under the doctrine of *res judicata*, a "valid and final judgment on a claim precludes a second action on that claim or any part of it." *J.Z.G. Resources, Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 214 (6th Cir. 1996). *Res judicata* serves "not only to bar the parties from relitigating issues that *could have been raised* in an earlier action." *Id.* Plaintiff's claim that the Bureau of Prisons' policy regarding rune staves burdens his free exercise of religion already has been litigated. Therefore, Plaintiff may not relitigate this claim in this Court.

Accordingly, **IT IS ORDERED** that the Complaint is **DISMISSED**.

s/ DENISE PAGE HOOD

Denise Page Hood
United States District Judge

Dated: May 31, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 31, 2006, by electronic and/or ordinary mail.

s/William F. Lewis

Case Manager